STATE OF MICHIGAN

COURT OF APPEALS

KELLEY R. AREVELO,

Plaintiff/Counter-Defendant-Appellant,

v

RAYMOND A. AREVALO,

Defendant/Counter-Plaintiff-Appellee,

and

AUTOMACON INDUSTRIAL MACHINERY SERVICE, INC.,

Defendant-Appellee.

UNPUBLISHED
April 6, 2010

No. 285548
Wayne Circuit Court
LC No. 06-604610-CZ

KELLEY R. AREVALO,

Plaintiff/Counter-Defendant-Appellant,

v

RAYMOND A. AREVALO,

Defendant/Counter-Plaintiff,

and

AUTOMACON INDUSTRIAL MACHINERY SERVICE, INC.,

Defendant-Appellee.

No. 286742
Wayne Circuit Court
LC No. 06-604610-CZ

Before: HOEKSTRA, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

In Docket No. 285548, plaintiff Kelley Arevalo (Kelley) appeals as of right the May 2, 2008 final judgment entered after a bench trial denying her claim of breach of divorce judgment against defendant Raymond Arevalo (Raymond) and dismissing her alter-ego claim against defendant Automacon Industrial Machinery Service, Inc. (AIMS). In Docket No. 286742, Kelley appeals as of right the July 9, 2008 order granting case evaluation sanctions to AIMS. In Docket No. 285548, we affirm the May 2, 2008 final judgment, as well as the orders granting summary disposition to Raymond on his counterclaim for dissolution and on Kelley's claims for conversion and illegal and oppressive acts, the orders reassigning the case and denying Kelley's demand for a jury trial on the claim for breach of divorce judgment, and the order denying Kelley leave to add a claim for hostile work environment. We reverse the order granting summary disposition to Raymond on Kelley's claim for retaliation. In Docket No. 286742, we affirm the order granting case evaluation sanctions.

I. BASIC FACTS

During their marriage, Kelley and Raymond incorporated K&R Machinery (K&R), a machine repair company. A February 2004 consent judgment of divorce, entered by Wayne Circuit Judge Kathleen M. McCarthy, ended the parties' marriage. The divorce judgment contained three provisions regarding K&R:

> 18. The parties shall continue to maintain their business, K&R Machinery ("the business["]). Each party shall maintain fifty percent (50%) stock ownership in the business. The parties shall cause new stock certificates to be issues [sic] in their respective names as tenants in common.
>
> 19. The parties shall maintain their current salaries from the business. Plaintiff husband shall maintain his salary of Fifty Four Thousand ($54,000) Dollars. Defendant wife shall maintain her salary of Forty Two Thousand ($42,000) Dollars. The listed salaries shall remain in effect unless there is a written agreement signed by both parties.
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> 20. The plaintiff husband shall maintain his current position operating the company as president.

In February 2006, Kelley obtained a personal protection order (PPO) against Raymond. After the PPO was continued following a hearing in March 2006, Raymond ceased his employment with K&R. He subsequently worked for AIMS, also a machine repair company, that was incorporated in March 2006 by Terri Kiser, with whom he had a dating relationship.

Kelley sued Raymond, in part, for breach of divorce judgment, conversion, illegal and oppressive acts, and retaliation. She also asserted an alter-ego claim against AIMS. Raymond countersued Kelley for dissolution of K&R. The case was assigned to Judge John A. Gillis, Jr.

Judge Gillis granted summary disposition to Raymond on his counterclaim for dissolution of K&R. The case was then reassigned, by order of then-Chief Judge Mary Beth

Kelly, to Judge McCarthy. Judge McCarthy granted summary disposition to Raymond under MCR 2.116(C)(8) on Kelley's claims for conversion, illegal and oppressive acts, and retaliation, and denied Kelley leave to add a claim for hostile work environment. Judge McCarthy also denied Kelley's demand for a jury trial on her claim for breach of divorce judgment. Following a bench trial, Judge McCarthy found that (1) the value of K&R was $39,500 and awarded one-half of this amount to Kelley, (2) Raymond had not breached the divorce judgment, and (3) AIMS was not the alter ego of K&R. Judge McCarthy also awarded $10,773.65 in case evaluation sanctions to AIMS.

II. DOCKET NO. 285548

A. DISSOLUTION OF K&R

Kelley first argues that, because Raymond failed to present evidence that satisfied the requirements of MCL 450.1823, Judge Gillis erred in granting an order to dissolve K&R. We disagree.

We review de novo a trial court's ruling on a motion for summary disposition. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). Raymond moved for summary disposition under MCR 2.116(C)(8) and (10) on his counterclaim for dissolution. Judge Gillis did not articulate under which subrule he granted the motion. Because summary disposition is appropriate under MCR 2.116(C)(8) only if "[t]he *opposing* party has failed to state a claim on which relief can be granted" (emphasis added), summary disposition could not be granted to Raymond under MCR 2.116(C)(8) on his own claim for dissolution. Accordingly, we review the order granting dissolution under the standards applicable to a motion filed pursuant to MCR 2.116(C)(10). Summary disposition is appropriate under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." We must "consider[] the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh*, 263 Mich App at 621.

MCL 450.1823 provides for judicial dissolution of a corporation. The statute reads:

> A corporation may be dissolved by a judgment entered in an action brought in the circuit court of the county in which the principal place of business or registered office of the corporation is located by 1 or more directors or by 1 or more shareholders entitled to vote in an election of directors of the corporation, upon proof of both of the following:
>
> (a) The directors of the corporation, or its shareholders if an agreement among the shareholders authorized by [MCL 450.1488] is in effect, are unable to agree by the requisite vote on material matters respecting management of the corporation's affairs, or the shareholders of the corporation are so divided in voting power that they have failed to elect successors to any director whose term has expired or would have expired upon the election and qualification of his or her successor.

(b) As a result of a condition stated in subdivision (a), the corporation is unable to function effectively in the best interests of its creditors and shareholders.

The first requirement for dissolution under MCL 450.1823 is that the shareholders "are unable to agree by the requisite vote on material matters respecting management of the corporation's affairs." In February 2006, Kelley obtained a PPO against Raymond. In the PPO application, Kelley alleged that, while at K&R premises, Raymond groped her breasts, threw a coffee mug at her, and exploded in a fit of rage. The PPO prohibited Raymond from interfering with Kelley at her place of employment. As a result of the PPO, Raymond ceased his employment with K&R and commenced employment with a third party. Kelley did not dispute Raymond's assertion that they could not be in the same room without arguing. Further, Kelley and Raymond could not agree on whether to continue corporate activities—Raymond wanted to dissolve K&R, while Kelley wanted to continue the business. This evidence establishes that Kelley and Raymond were unable to agree on matters respecting the management of K&R.

The second requirement for dissolution under MCL 450.1823 is that "the corporation is unable to function effectively in the best interests of its creditors and shareholders." Raymond ceased his employment with K&R in March 2006. At the motion hearing, Raymond represented that K&R was no longer performing any business; Kelley did not dispute the representation. Because K&R was no longer conducting business, K&R was no longer able to function effectively in the best interests of its creditors and shareholders.

Because the evidence establishes that the two requirements of MCL 450.1823 were met, we affirm Judge Gillis's order dissolving K&R. In doing so, we reject Kelley's intimation that summary disposition was premature because discovery was not yet complete. Generally, summary disposition under MCR 2.116(C)(10) is premature if discovery has not closed. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009). "However, the mere fact that the discovery period remains open does not automatically mean that the trial court's decision to grant summary disposition was untimely or otherwise inappropriate. The question is whether further discovery stands a fair chance of uncovering factual support for the opposing party's position." *Id.* Kelley has not explained what evidence may have been discovered to provide factual support for her position that judicial dissolution of K&R was not permitted. Accordingly, Kelley has not established that the order of dissolution was premature.

B. REASSIGNMENT

Kelley next asserts that Chief Judge Kelly erred in reassigning the case to Judge McCarthy. Specifically, she claims that because the actions that led to the claim for breach of divorce judgment began 18 months after the divorce judgment was signed, the present action did not arise from the same transaction or occurrence as the divorce action. We disagree.

We review de novo the interpretation and application of a court rule. *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 258; 739 NW2d 121 (2007).

Chief Judge Kelly reassigned the present case to Judge McCarthy pursuant to MCR 8.111(D)(2). The court rule provides that "if an action arises out of the same transaction or

occurrence as a civil action previously dismissed or transferred, the action must be assigned to the judge to whom the earlier action was assigned[.]" "[A]ctions arise from the same transaction or occurrence only if each arises from the identical events leading to the other or others." *Armco Steel Corp v Dep't of Treasury*, 111 Mich App 426, 437; 315 NW2d 158 (1981), aff'd 419 Mich 582 (1984). The only case cited by Kelley in support of her argument that her claim for breach of divorce judgment did not arise from the same transaction or occurrence as the divorce action is *Decker v Decker*, unpublished opinion per curiam of the Court of Appeals, issued April 25, 2006 (Docket No. 266446). An unpublished opinion is not binding under the rule of stare decisis, MCR 7.215(C)(1), and *Decker* is of no persuasive value. Reassignment was not an issue in the case.

Regardless of the mandate of MCR 8.111(D)(2), Chief Judge Kelly did not err in reassigning the case to Judge McCarthy. In her claim for breach of divorce judgment, Kelley alleged that Raymond breached the provisions in the divorce judgment that pertained to K&R. Specifically, she wanted the provision in the divorce judgment that required her and Raymond to maintain K&R to be enforced. The divorce judgment was a consent judgment. "A consent judgment is in the nature of a contract, and is to be construed and applied as such." *Laffin v Laffin*, 280 Mich App 513, 517; 760 NW2d 738 (2008). However, the remedy for a party's failure to comply with the terms of a consent judgment is the enforcement of that judgment. *Trendell v Solomon*, 178 Mich App 365, 369; 443 NW2d 509 (1989). Kelley's remedy to enforce the divorce judgment was enforcement of the judgment, and a motion to enforce was required to be heard by Judge McCarthy. The divorce judgment specifically provided that the trial court (Judge McCarthy) "retain[ed] jurisdiction over this matter in order to enforce all the terms herein." Accordingly, Chief Judge Kelly properly reassigned the claim for breach of divorce judgment to Judge McCarthy. In addition, we find no error in the reassignment of Kelley's remaining claims. Actions may be consolidated when they involve "substantial and controlling common question[s] of law or fact." MCR 2.505(A)(2). Considerations of judicial economy often favor consolidation. *Bordeaux v Celotex Corp*, 203 Mich App 158, 163; 511 NW2d 899 (1993). Kelley's claims contained common questions of fact regarding Raymond's conduct toward her and K&R, and having one judge hear all the claims furthered goals of judicial economy. We affirm the order reassigning the present case to Judge McCarthy.

C. CONVERSION

Kelley claims that the trial court,[1] in granting summary disposition to Raymond on her claim for conversion, erred in two conclusions: (1) that she alleged a claim for common-law conversion, rather than statutory conversion; and (2) that she failed to allege a conversion of tangible property. We disagree.

The trial court granted summary disposition to Raymond under MCR 2.116(C)(8) on Kelley's claim for conversion. A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *USA Cash #1, Inc v Saginaw*, 285 Mich App 262, 265; 776 NW2d

[1] All references to the "trial court" refer to Judge McCarthy.

346 (2009). All well-pleaded allegations must be accepted as true and viewed in the light most favorable to the nonmoving party, and the motion may only be granted if the claim is so legally deficient that recovery would be impossible. *Id*.

"The common-law tort of conversion consists of any distinct act of dominion wrongfully exerted over another person's personal property." *Echelon Homes, LLC v Carter Lumber Co*, 261 Mich App 424, 436; 683 NW2d 171 (2004), rev'd in part on other grounds 472 Mich 192 (2005) (quotation omitted). The measure of damages is the value of the property at the time of the conversion. *Ehman v Libralter Plastics, Inc*, 207 Mich App 43, 45; 523 NW2d 639 (1994). The Legislature has also provided a statutory cause of action for conversion, in which a plaintiff may obtain treble damages. See MCL 600.2919a.

A complaint must contain "[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend[.]" MCR 2.111(B)(1). In her conversion claim, Kelley did not reference MCL 600.2919a, nor did she request treble damages. There was nothing in the conversion claim to reasonably inform Raymond that he needed to defend a claim of statutory conversion, rather than common-law conversion. Kelley asserts that she "did not allege common law conversion. She alleged statutory conversion under MCL 600.2919a," but she provides no argument for why her conversion claim should be construed as a claim for statutory conversion. Accordingly, we conclude that the trial court did not err in its conclusion that Kelley alleged a claim for common-law conversion.

In addition, we conclude that the trial court did not err in its conclusion that Kelley did not allege a conversion of tangible property. Kelley's assertion that she alleged a conversion of tangible property is not based on the allegations in the conversion claim. Rather, the assertion is based on a factual allegation, that she was a 50 percent shareholder of K&R, and two allegations in the illegal and oppressive acts claim, that Raymond removed personal property belonging to K&R from K&R premises and that Raymond misappropriated K&R's business assets. Kelley may have incorporated all previous allegations into the conversion claim, but in the conversion claim, she only alleged that Raymond converted her "ownership in the business." Thus, the allegations in the conversion claim only informed Raymond that he was being called on to defend a claim that he converted Kelley's ownership interest in K&R. We affirm the trial court's order granting summary disposition to Raymond on the conversion claim.[2]

D. ILLEGAL AND OPPRESSIVE ACTS

[2] We deny Kelley's request for an opportunity to amend the complaint to make clear that Raymond's alleged acts of converting tangible property occurred before K&R was dissolved. Because the requested amendment would not affect the allegations in the conversion claim, the amendment would not alter our analysis of the propriety of the trial court's order granting summary disposition to Raymond.

Kelley claims that, because she sought damages for Raymond's destruction of her interests as a shareholder in K&R, the trial court erred in granting summary disposition under MCR 2.116(C)(8) to Raymond on her claim for illegal and oppressive acts. We disagree.

The Legislature has provided a cause of action for shareholders of a closely held corporation who are abused by those in control of the corporation. *Estes v Idea Engineering & Fabrications, Inc*, 250 Mich App 270, 278; 649 NW2d 84 (2002). MCL 450.1489(1) provides:

> A shareholder may bring an action in the circuit court of the county in which the principal place of business or registered office of the corporation is located to establish that the acts of the directors of those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the shareholder. If the shareholder establishes grounds for relief, the circuit court may make an order or grant relief as it considers appropriate . . . .

At the time Kelley filed her complaint, MCL 450.1489(3) read:

> As used in this section, "willfully unfair and oppressive conduct" means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. The term does not include conduct or actions that are permitted by an agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure.

In *Franchino v Franchino*, 263 Mich App 172, 189; 687 NW2d 620 (2004), this Court held that MCL 450.1489 only gives rise to a cause of action where a shareholder suffered oppression in his or her capacity as a shareholder. A shareholder may not sue under the statute for oppression suffered in his capacity as a director or an employee. *Id.* at 185-186. The Court stated that rights of shareholders include "voting at shareholder's meetings, electing directors, adopting bylaws, amending charters, examining the corporate books, and receiving corporate dividends." *Id.* at 184, citing 12 Fletcher Cyclopedia Corporations, ch 58, § 5717, p 22.

In the amended complaint, Kelley alleged that Raymond committed the following 15 "wrongful acts":

> A. Removing from the business premises any personal property appertaining to the business of any value, e.g., business related lap-top computers with necessary software, business records, customer lists, trade journals and trade manuals.
>
> B. Inducing key employees to leave their employment.
>
> C. Destroying all good will of the business.
>
> D. Inducing key customers to do business with third-parties instead of the business.

E. Misappropriating all of the business assets, including customer lists, customer files and manuals relating to customer equipment.

F. Engaging in conflicts of interest.

G. Violating duties of good faith and fair dealing.

H. Usurping business opportunities which belong to the business.

I. Violating duties of loyalty and honesty to the business.

J. Violating the duties proscribed and prohibited by MCL 450.1541a.[3]

K. After quitting using its credit line to obtain $21,000.00 for non-business purposes.

L. After quitting charging personal expenses to the business.

M. Physically assaulting Plaintiff.

N. Verbally assaulting Plaintiff.

O. Creating a sexually hostile environment.

Kelley fails to explain how any of these alleged wrongful acts affected her rights as a shareholder. She does not explain how Raymond's alleged act of "[i]nducing key employees to leave their employment" or his alleged act of "charging personal expenses to the business" affected her rights to vote at shareholder meetings, to elect directors, to adopt bylaws, to amend charters, to examine corporate books, or to receive corporate dividends. We fail to see any connection between Raymond's alleged wrongful acts and the oppression of Kelley's shareholder rights.[4] The alleged wrongful acts are generally torts against Kelley in a personal capacity or against K&R as a breach of fiduciary duty. Accordingly, the trial court did not err in concluding that Kelley failed to allege wrongful acts that affected her rights as a shareholder.

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[3] MCL 450.1541a(1) provides that a director or an officer of a corporation shall discharge his duties in good faith, with the care of an ordinarily prudent person, and in a manner reasonably believed to be in the best interests of the corporation. The statute also sets forth what information a director or officer may rely. MCL 450.1541a(2), (3). The statute provides for a cause of action if a director or officer fails to perform his duties under the statute. MCL 450.1541a(4).

[4] Some of the alleged wrongful acts, such as "[i]nducing key customers to do business with third-parties" and "[u]surping business opportunities which belong to the business" could possibly effect the *amount* of corporate dividends that Kelley received, but the acts did not impair Kelley's *right* to receive dividends.

Kelley also claims that because of the 2006 amendment to MCL 450.1489(3) she has the right to allege the loss of her employment as part of her damages. In 2006, the Legislature amended MCL 450.1489(3) by adding the following sentence: "Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder." The amendment became effective March 20, 2006. 2006 PA 68.

Kelley gives the argument cursory treatment. She fails to acknowledge the qualifying language in the sentence added by the Legislature. In addition, Kelley fails to make any argument that, even though the effective date of the amendment, March 20, 2006, was more than a month after the date the original complaint was filed, February 15, 2006, the amendment applies to the present case. While the illegal and oppressive acts claim was not in Kelley's original complaint, an amended pleading generally relates back to the date of the originally filed pleading, *Ligons v Crittenton Hosp*, 285 Mich App 337, 354; 776 NW2d 361 (2009), and statutory amendments are to be applied prospectively unless the Legislature manifested a contrary intent, *Davis v State Employees' Retirement Bd*, 272 Mich App 151, 155; 725 NW2d 56 (2006). Based on Kelley's cursory treatment of the issue, we conclude that Kelley has abandoned any argument concerning the 2006 amendment to MCL 450.1489(3). *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). We affirm the trial court's order granting summary disposition to Raymond on Kelley's claim for illegal and oppressive acts.

E. HOSTILE WORK ENVIRONMENT

Kelley argues that the trial court erred in denying her leave to add a claim for hostile work environment against Raymond. We disagree.

We review a trial court's decision on a motion to amend a pleading for an abuse of discretion. *Hamed v Wayne Co*, 284 Mich App 681, 699; 775 NW2d 1 (2009). "Leave [to amend a pleading] shall be freely given when justice so requires." MCR 2.118(A)(2). "[A] motion to amend should ordinarily be denied only for particularized reasons, including undue delay, bad faith or a dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, or futility." *PT Today, Inc v Comm'r of the Office of Financial & Ins Services*, 270 Mich App 110, 143; 715 NW2d 398 (2006).

Kelley argued below that the trial court should grant her leave to add a hostile work environment claim because this Court, in *Elezovic v Bennett* (*Elezovic II*), 274 Mich App 1; 731 NW2d 452 (2007), had recently reversed *Jager v Nationwide Truck Brokers, Inc*, 252 Mich App 464; 652 NW2d 503 (2002), in which the Court held that an agent of an employer cannot be held individually liable under the Elliott-Larson Civil Rights Act (CRA), MCL 37.2101 *et seq*. Kelley asserted that before *Elezovic II* was decided in January 2007 she was unable to allege a hostile work environment claim against Raymond.

An "employer," pursuant to the CRA, is prohibited from discriminating on the basis of sex. MCL 37.2202(1)(a); *Elezovic v Ford Motor Co* (*Elezovic I*), 472 Mich 408, 419; 697 NW2d 851 (2005). The CRA defines an "employer" as "a person who has 1 or more employees, and includes an agent of that person." MCL 37.2201(a). A "person" includes a corporation. MCL

37.2103(g). In *Jager*, 252 Mich App at 484, this Court held that "the language in the definition of 'employer' concerning an 'agent' of the employer was meant merely to denote respondeat superior liability, rather than individual liability." It, therefore, concluded "that the CRA provides solely for employer liability, and a supervisor engaging in activity prohibited by the CRA may not be held individually liable for violating a plaintiff's civil rights." *Id.* at 485. In *Elezovic I*, 472 Mich at 411, the Supreme Court overruled *Jager*. It reasoned "that, when a statute says 'employer' means 'a person who has 1 or more employees, and *includes an agent of that person*,' it must, if the words are going to be read sensibly, mean that the Legislature intended to make the agent tantamount to the employer so that the agent unmistakably is also subject to suit along with the employer." *Id.* at 420 (emphasis in original).[5]

Because *Jager* was overruled by the Supreme Court in 2005, Kelley's justification for why she should be allowed to add a claim for hostile work environment is meritless. At all times in the present case, which was initiated in February 2006, Kelley could have asserted a hostile work environment claim against Raymond.

However, the trial court did not deny Kelley leave to add a hostile work environment claim for the reason that Kelley's justification for adding the claim was meritless. Rather, the trial court denied leave because Kelley and Raymond, each a 50 percent shareholder, had equal standing in K&R. It essentially concluded that, because Kelley was not Raymond's employee or in a subordinate position to Raymond, amendment to add a hostile work environment claim would be futile. On appeal, Kelley claims that, based on the Supreme Court's holding in *Elezovic I* and the fact that K&R had more than one employee, the trial court erred in its conclusion.

K&R was an "employer" under the CRA. Although shareholders of K&R, Kelley and Raymond were also employees of K&R.[6] And, based on *Elezovic I*, Raymond can be an "agent" of K&R and be personally liable for any sexual harassment of Kelley committed by him, *if* he had been delegated influence and power over Kelley's employment circumstances. See *Elezovic II*, 274 Mich App at 10, 12. In the amended complaint, Kelley alleged that Raymond was in a higher management position than her and that he possessed the ability to exercise influence over hiring, firing, and invoking discipline. However, Kelley's argument on appeal is completely silent regarding whether Raymond had any power over her employment circumstances with K&R. Kelley cites no evidence, whether the evidence be deposition testimony, answers to interrogatories, or trial testimony, that could possibly support a claim that Raymond had been delegated supervisory power over her employment circumstances. Because Kelley makes no

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[5] *Elezovic II* involved the appeal following the Supreme Court's remand to the trial court in *Elezovic I*. The issue in *Elezovic II* was whether the defendant was acting as an agent of his employer when he committed the alleged acts of sexual harassment. The Court acknowledged that, in *Elezovic I*, "the [Supreme] Court overruled the *Jager* holding." *Elezovic II*, 274 Mich App at 4.

[6] In his answer to the amended complaint, Raymond admitted that he and Kelley were employees of K&R.

argument that Raymond had power over her employment circumstances, Kelley has failed to establish that amendment to add a claim of hostile work environment against Raymond would not be futile. Accordingly, we affirm the trial court's order denying Kelley leave to amend.

F. RETALIATION

Kelley next asserts that the trial court erred in granting summary disposition under MCR 2.116(C)(8) to Raymond on her claim for retaliation. We agree.

In the amended complaint, Kelley specifically alleged that Raymond retaliated against her in violation of § 701 of the CRA. MCL 37.2701 provides, in pertinent part:

> Two or more persons shall not conspire to, or a person shall not:
>
> (a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

To establish a retaliation claim, a plaintiff must prove "(1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action." *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).

A "person" is prohibited from retaliating against another who has engaged in a protected activity. MCL 37.2701. The CRA defines a "person" as "an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, the state or a political subdivision of the state or an agency of the state, or any other legal or commercial entity." MCL 37.2103(g). Because the CRA defines a "person," a "person" for MCL 37.2701 may not be defined in any other manner. *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007).

In *Rymal v Baergen*, 262 Mich App 274; 686 NW2d 241 (2004), this Court recognized that the antiretaliation provision of the CRA is broader than the antidiscrimination provision. *Elezovic I*, 472 Mich at 424 n 21. When this Court decided *Rymal*, *Jager* was good law, and the issue before the Court was whether the holding of *Jager*, that individuals cannot be held liable for discrimination, precluded individual liability under the antiretaliation provision. The Court concluded that, because the Legislature used different terms in the antidiscrimination provision, MCL 37.2202 (an "employer"), and the antiretaliation provision, MCL 37.2701 (a "person"), and because the CRA's definition of a "person" included an "individual," the Legislature authorized individual liability for retaliatory acts. *Id.* at 298-299. The Court stated, in pertinent part:

> [T]he antiretaliation provision of the CRA, MCL 37.2701, clearly prohibits "[t]wo or more persons . . . or a person" from retaliating or discriminating against a person who has opposed a violation of the CRA . . . . In contrast to MCL 37.2202(1), which prohibits an "employer" from engaging in

> discrimination practices . . . § 2701 refers merely to a "person." And a "person" includes an "individual" . . . . The "employer" definition contained in § 2201(a), and referenced in § 2202(1), is simply not implicated in the antiretaliation provision of the CRA.
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> * * *
>
> MCL 37.2701 could not be drafted in a manner that is any more clear or unambiguous; a "person," which by statute and necessity includes an individual, shall not retaliate, and the term invokes individual liability. There is no language that could conceivably be interpreted as limiting an action for retaliation under the CRA against only an employer. Giving effect to the Legislature's intent as expressed in the words of the statute leads us to the conclusion that a CRA retaliation claim under § 2701 can be maintained against individuals apart from employers. . . . The language in § 2701 is much broader than that in § 2202. . . . [*Id.* at 297-298.]

The trial court granted summary disposition on the retaliation claim because Kelley was not in a subordinate position to Raymond. We conclude that the trial court erred in its conclusion. A "person" shall not retaliate, MCL 37.2701, and nothing in the definition of "person" requires the person to be in a position of power or authority. As is clear from the *Rymal* decision, the definition of "employer" does not govern who may be sued for retaliation. Raymond is an "individual," and because the definition of a "person" includes an "individual," Kelley can assert a retaliation claim against Raymond.

Raymond sets forth two alternative grounds for affirmance. First, he argues that, because he and Kelley engaged in sexual relations until August 2005, there were no "unwelcome" sexual advances. Necessarily implied in Raymond's argument is the assertion that Kelley voluntarily engaged in the sexual relations. Because Raymond did not raise this argument below, it is unpreserved for appellate review, and we are not obligated to address it. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

Regardless, there is no merit to the argument. Because Raymond moved for summary disposition under MCR 2.116(C)(8), only the pleadings may be considered. *USA Cash #1*, 285 Mich App at 265. Thus, we may not consider Raymond's affidavit in which he averred that Kelley manipulated him to agree to maintain K&R by engaging in sexual relations with him. In the amended complaint, Kelley alleged that, until late August 2005, she ceded to Raymond's demands for sexual favors in fear of losing employment with K&R. She also alleged that, after she began to resist Raymond's demands, Raymond became more aggressive and threatened to bankrupt K&R and to leave her without employment. Accepting these allegations as true and viewing them in a light most favorable to Kelley, *id.*, Kelley alleged that Raymond's sexual advances were unwelcome.

Second, Raymond argues that Kelley suffered no adverse employment action because dissolution is not an "employment" action. The argument is conclusory. Because Raymond fails to cite any authority for the proposition that dissolution is not an employment action, Raymond has abandoned the issue. *Peterson Novelties*, 259 Mich App at 14. Even considering the merits of the argument, we find the argument to be without merit.

To establish a retaliation claim under the CRA, a plaintiff must establish that she suffered an adverse employment action. *DeFlaviis*, 223 Mich App at 436. There is no exhaustive list of adverse employment actions. *Chen v Wayne State Univ*, 284 Mich App 172, 201; 771 NW2d 820 (2009). The action must be materially adverse to the employee; "it must be more than a mere inconvenience or minor alteration of job responsibilities." *Id.* Generally, materially adverse employment actions "take[] the form of an ultimate employment decision, such as a termination in employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation." *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 312; 660 NW2d 351 (2003) (quotation omitted).

"[A] dissolved corporation, its officers, directors and shareholders shall continue to function in the same manner as if dissolution had not occurred." MCL 450.1834. But a dissolved corporation "shall not carry on business except for the purpose of winding up its affairs." MCL 450.1833. Thus, a dissolved corporation may continue to exist only until it has finished winding up its affairs. *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483, 495-496; 776 NW2d 387 (2009). Therefore, after Judge Gillis ordered K&R dissolved, Kelley could not continue her employment as K&R's office manager and bookkeeper. The dissolution of K&R materially affected Kelley's employment with K&R; it terminated the employment.[7]

Raymond, as a shareholder of K&R, had the right to request that K&R be dissolved. MCL 450.1823. However, the CRA, by prohibiting a person from retaliating against another for the other's opposition to a violation of the CRA, MCL 37.2701(a), prohibited Raymond from seeking dissolution of K&R because Kelley rejected his sexual advances. While Raymond could seek dissolution of K&R, he could not do so for an unlawful purpose.

Under the unique facts of this case, Raymond has not established that his request for dissolution of K&R did not result in an adverse employment action suffered by Kelley for her refusal to submit to Raymond's sexual demands. We reverse the trial court's order granting summary disposition to Raymond on Kelley's retaliation claim.

G. JURY DEMAND

Kelley asserts that the trial court erred in denying her demand for a jury trial on the claim for breach of divorce judgment. She argues that because the claim is for breach of a contract and only monetary damages were requested, the claim is legal in nature. We disagree.

We review questions of law de novo. *Cummins v Robinson Twp*, 283 Mich App 677, 690; 770 NW2d 421 (2009).

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[7] Citing six lines from the transcript of the bench trial, Raymond claims that Kelley remained employed after K&R was dissolved. The cited lines only indicate that Tim Cupples, an employee of K&R, continued to work at K&R for a short period after Raymond stopped working for K&R in March 2006.

Kelley included a demand for a jury trial in her complaint. If a jury trial has been demanded, the issues shall be tried by jury unless "the court on motion or on its own initiative finds that there is no right to trial by jury of some or all of those issues." MCR 2.509(A)(2). The trial court held that, pursuant to MCL 552.12, Kelley was not entitled to a jury trial on her claim for breach of divorce judgment. MCL 552.12 provides:

> Suits to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as other suits in courts of equity; and the court shall have the power to award issues, to decree costs, and to enforce its decrees, as in other cases.

There is no right to a jury trial in a divorce action. See *Draggoo v Draggoo*, 223 Mich App 415, 427; 566 NW2d 642 (1997). MCL 552.12 grants a court the power to enforce its decrees. As discussed in part II(B), *supra*, Kelley's claim for breach of divorce judgment is a motion to enforce the provision in the divorce judgment that the parties shall maintain K&R.

Neither of the two cases cited by Kelley, *ECCO, Ltd v Balimoy Mfg Co, Inc*, 179 Mich App 748; 446 NW2d 546 (1989); and *Decker*, unpub op, support the proposition that a motion to enforce a judgment that was obtained in an equity action may be tried before a jury. In *ECCO*, 179 Mich App at 750-751, this Court held that the plaintiff's claim for promissory estoppel, although an equitable action, was properly tried before a jury because the plaintiff sought monetary damages, rather than equitable relief, and there was no claim that monetary damages were not an adequate remedy. However, the promissory estoppel claim in *ECCO* was an original action; it was not a disguised motion to enforce a judgment obtained in equity. In *Decker*, there was no issue concerning the plaintiff's right to jury trial on her claim for one-half of the rental proceeds. The case was decided on a motion for summary disposition. Because Kelley has provided us with no authority to suggest that a motion to enforce a divorce judgment may be tried before a jury, we affirm the trial court's order denying her demand for a jury trial on the claim for breach of divorce judgment.

H. BREACH OF DIVORCE JUDGMENT

Kelley argues that the trial court, at the conclusion of the bench trial, erred in finding that Raymond did not breach the judgment of divorce by refusing to maintain K&R according to the terms of their judgment of divorce. We disagree.

We review a trial court's factual findings at a bench trial for clear error and its conclusions of law de novo. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). "A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

Resolution of this issue requires determining under what circumstances the agreement between the parties to maintain K&R following their divorce could be terminated. Only paragraphs 18 and 19 of the divorce judgment are potentially relevant to the inquiry. Paragraph 18 of the divorce judgment provided that "[t]he parties shall continue to maintain [K&R]." Paragraph 19 of the divorce judgment provided, in part, that "[t]he listed salaries shall remain in effect unless there is a written agreement signed by both parties."

Kelley admits that paragraph 18 standing alone did not provide for how long the parties were required to maintain K&R. Nevertheless, Kelley claims that the parties intended for K&R to be maintained until she and Raymond mutually agreed to terminate the business because otherwise the salary "guarantee" in paragraph 19 would have no meaning. Thus, when read together, paragraphs 18 and 19 evinced an agreement that the parties would "earn a living from the business until they otherwise mutually agreed."

The goal of contract interpretation is to enforce the parties' intent. *Chestonia Twp v Star Twp*, 266 Mich App 423, 432; 702 NW2d 631 (2005). A court must examine the contractual language, and if the language is clear and unambiguous, the contract must be enforced as written. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007). A contract is not ambiguous if it "fairly admits of but one interpretation." *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997). The parties to the contract are presumed to understand and intend what the language employed clearly states. *Chestonia Twp*, 266 Mich App at 432. A court may not rewrite an unambiguous contract on the basis of the parties' reasonable expectations. *Burkhardt v Bailey*, 260 Mich App 636, 656-657; 680 NW2d 453 (2004). A contract must be read as a whole. *Roberts v Titan Ins Co (On Reconsideration)*, 282 Mich App 339, 357; 764 NW2d 304 (2009). A court should avoid an interpretation of a contract that renders any part of the contract surplusage or nugatory. *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 638; 480 Mich 990 (2007).

Contrary to Kelley's argument, we conclude that the guarantee in paragraph 19 is not rendered meaningless if a durational requirement, e.g., that the parties would maintain K&R until otherwise agreed, is not read into paragraph 18. Rather, paragraph 19 means exactly what it says: that, as long as K&R is maintained, the "listed salaries" of Kelley and Raymond shall remain in effect until otherwise agreed. And, this is the only interpretation that can be given to paragraph 19 without reading into paragraph 18 a duration provision that is not included within the plain language of the divorce judgment. A contract must be enforced according to its plain language, *Coates*, 276 Mich App at 503, and the plain language of the divorce judgment does not contain a requirement for how long Kelley and Raymond were required to maintain K&R.

We must, however, still determine whether the trial court erred in its conclusion that Raymond did not breach the parties' judgment of divorce. A contract for an indefinite term and that does not contain a specific termination procedure is terminable at the will of either party. *Lichnovsky v Ziebart Int'l Corp*, 414 Mich 228, 236, 242; 324 NW2d 732 (1982). The Supreme Court explained:

> It is not the law that an agreement must have a definite term or duration and that therefore an agreement which does not have a definite term or duration is terminable at the will of either party. A franchise agreement need not, any more than an employment or an agency agreement, have an outside time limit to be valid.
>
> The rule is rather that where the parties have not agreed upon *the term, duration, or manner of termination* of such an agreement it is generally deemed to be terminable at the will of either party because they have not agreed otherwise. The intent of the parties is determinative. An agreement which the parties have agreed is terminable only for cause, and which is thus by their agreement to

endure until so terminated, is legally enforceable until terminated on that ground. [Id. at 240-241 (emphasis added).]

In this case, the parties' divorce judgment did not provide for the term, duration or manner of termination of the parties' agreement to maintain K&R. In the absence of these terms, the parties' agreement to maintain K&R was terminable at the will of either party. An at-will contract may be terminated by either party with or without cause. See *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 451; 750 NW2d 615 (2008) ("[E]mployment relationships are terminable at will, with or without case, at any time for any, or no, reason.") (quotation omitted); Black's Law Dictionary (7th ed) (defining "at will" as "able to be terminated or discharged by either party without cause"). Because the parties' agreement to maintain K&R was terminable at will, the trial court did not clearly err in finding that Raymond did not breach the divorce judgment. We affirm the trial court's judgment denying Kelley's claim for breach of divorce judgment.

I. THE VALUE OF K&R

Kelley claims that trial court clearly erred in finding that the value of K&R was $39,500, rather than $111,273. Kelley's argument consists of two points: (1) the trial court erred in not accepting the testimony of her expert, Clinton Meyering, that the Delaware Block method should not be used to determine the value of K&R; and (2) the trial court erred in not accepting Meyering's testimony that the $75,000 sale of a rebuilt machine in 2005 was not a nonrecurring event.

Earl Belger, pursuant to court order, conducted an "estimate of value" of K&R. He explained that an estimate of value is "a curser [sic] review of the books and records," a review in which the "numbers" provided by the accountant are relied on. Belger valued K&R under an adjusted assets method and a capitalized earnings method. He then utilized the Delaware Block method and added the values given by the adjusted assets method and the capitalized earnings method and divided by two. Belger admitted that the Delaware Block method does not have to be used and that the IRS even prefers that one method of valuation be used. However, he stated that it was preferable to use two methods when one does not "trust" or "feels a little bit uneasy" with the numbers. And, he firmly believed that there had been "some manipulation" of the numbers that were given to him by K&R's accountant. Belger admitted that he could have only used the capitalized earnings method to determine the value of K&R, but, under the circumstances, he lacked confidence in that manner of valuation.

Meyering testified that the value of K&R should be determined solely by the capitalized earnings method. He explained that the Delaware Block method is, in reality, never used to determine the value of a business, because a business is always sold for its highest value. The IRS has even condemned the Delaware Block method. Meyering explained that, because K&R was a service-oriented company, whose main asset was its customer base, the value of K&R should be based on its capitalized earnings.

The two experts disagreed regarding whether the capitalized earnings method, by itself, provided an accurate value of K&R. Based on Belger's testimony for why he utilized the Delaware Block method—that he lacked confidence in the capitalized earnings method based on a "manipulation" of the numbers provided to him, we are not left with a definite and firm

conviction that the trial court clearly erred in rejecting Meyering's testimony that the value of K&R should be determined solely by the capitalized earnings method. *Alan Custom Homes*, 256 Mich App at 512.

Meyering also testified that, in determining the value of K&R under the capitalized earnings method, Belger should not have adjusted the 2005 income of K&R for the $75,000 sale of a rebuilt machine. He explained that the sale was not a nonrecurring event, as it did not meet the two characteristics of nonrecurring events. First, the sale of the machine was related to the business of K&R; the business of K&R was to repair machines. Meyering explained that the sale of chickens would be an event unrelated to the business of K&R. Second, there was no reason that the sale of a machine would not occur again in the future, especially because K&R had a history of selling machines. Meyering noted that there was a line in K&R's general ledger—line 306—for the sale of machines, and that K&R had sold machines in 2001 for $30,000, in 2002 for $90,000, in 2003 for $8,000, and in 2004 for $50,000.

Despite Raymond's explanation for why the sale of the rebuilt machine was "unique" and "totally different" than any other sale of a machine by K&R, we find Meyering's explanation for why the sale was not a nonrecurring event to be reasonable. Nonetheless, we do not believe that the trial court's finding that the 2005 sale of the rebuilt machine was a nonrecurring event was clearly erroneous. Meyering had previously provided legal representation to Kelley. Belger, unlike Meyering, did not know either of the parties, and he did not discuss the value of K&R with either Kelley or Raymond. His estimate of value of K&R was based on the numbers provided by the accountant, as well as discussions he had with the accountant. The accountant informed Belger that the sale of the machine in 2005 was a nonrecurring event, and Belger saw nothing similar to the sale in the books. Notably, the $75,000 received from the 2005 sale was not listed in line 306 of the general ledger for sales of machines; rather, it was originally listed as a travel expense, because the accountant did not know how to characterize it. Under these circumstances, we are not left with a definite and firm conviction that the trial court clearly erred in rejecting Meyering's testimony that the value of K&R under the capitalized earnings method was $111,372. *Alan Custom Homes*, 256 Mich App at 512.

Because the trial court did not clearly err in rejecting Meyering's testimony concerning the use of the Delaware Block method and the 2005 sale of the rebuilt machine, we affirm the trial court's finding that the value of K&R was $39,500.[8]

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[8] Kelley also claims that, in only awarding her 50 percent of the value of K&R, the trial court failed to make an adjustment for the $21,000 that Raymond took from K&R's line of credit and which he stipulated he was responsible to repay. The argument does not fall within the question presented, which was whether the trial court's value of K&R was clearly erroneous. We consider the argument abandoned. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2003). Regardless, Kelley does not explain what adjustment should have been made. We also note that the record contains a stipulated order of indemnity that requires Raymond to indemnify and hold Kelley harmless from any liability to Chase Bank for the $21,000.

J. ALTER EGO

Kelley asserts that the trial court erred in finding that AIMS was not the alter ego of K&R because the trial court failed to understand the "compelling nature" of the facts that were consistent with a conclusion that AIMS was the alter ego of K&R."

An alter-ego claim is not, by itself, a cause of action. *In re RCS Engineered Products Co, Inc*, 102 F3d 223, 226 (CA 6, 1996). Rather, it is a doctrine that allows a court to disregard the corporate entity, i.e., to pierce the corporate veil. *Id.*; see also 18 Am Jur 2d, Corporations, §§ 51-52, pp 698-701. The remedy of piercing the corporate veil is equitable in nature. *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996). In reviewing a trial court's decision on a request for equitable relief, we "will set aside a trial court's factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008); see also *Law Officers of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 43; 436 NW2d 70 (1989).[9]

Kelley claimed that, because Raymond's actions were unjust and fraudulent toward K&R and its creditors, the trial court should declare AIMS to be the alter ego of K&R. She asserted that Kiser was merely a "fictional owner" of AIMS. A court shall disregard the corporate entity and pierce the corporate veil only where the following three prerequisites are satisfied:

> First, the corporate entity must be a mere instrumentality of another entity or individual. Second, the corporate entity must be used to commit a fraud or wrong. Third, there must have been an unjust loss or injury to the plaintiff. [*LaRose Market, Inc v Sylvan Ctr, Inc*, 209 Mich App 201, 209; 530 NW2d 505 (1995) (quotation omitted).]

We determine that AIMS was not used to commit a fraud or wrong. As established in part II(H), *supra*, because the parties' agreement to maintain K&R was terminable at will by the parties, Raymond did not breach the agreement when he ceased working for K&R in March 2006. Having lawfully terminated the parties' agreement to maintain K&R, Raymond was no longer under any obligations to K&R. He was free to work for or to even start another machine repair company; such actions by Raymond would not have been fraudulent or wrongful. Therefore, even if we were to conclude that the trial court's finding that Kiser incorporated AIMS to take advantage of a business opportunity was clearly erroneous, we would not reverse

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[9] At the end of the bench trial, the trial court stated that it could not conclude that AIMS was the alter ego of K&R and it was therefore granting AIMS's motion for a "directed verdict." The trial court should have characterized AIMS's motion to dismiss as a motion for involuntary dismissal. "Such a motion is granted in a bench trial when the court is satisfied after the presentation of the plaintiff's evidence that on the facts and the law the plaintiff has shown no right to relief." *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 235-236 n 2; 615 NW2d 241 (2000) (quotation omitted). In ruling on a motion for involuntary dismissal, a court may determine the facts. MCR 2.504(B)(2).

the trial court's judgment dismissing Kelley's alter-ego claim. See *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 46 (2009) ("[T]his Court will affirm where the trial court came to the right result even if for the wrong reason.").

III. DOCKET NO. 286742

Kelley claims that the trial court erred in granting case evaluation sanctions because, based on unusual circumstances, it was within the interest of justice to deny sanctions. We disagree.

Generally, a trial court's decision to grant case evaluation sanctions presents a question of law, which we review de novo. *Tevis v Amex Assurance Co*, 283 Mich App 76, 86; 770 NW2d 16 (2009). However, a trial court's decision regarding whether to invoke the "interest of justice" exception is reviewed for an abuse of discretion. *Harbour v Correctional Medical Services, Inc*, 266 Mich App 452, 465; 702 NW2d 671 (2005).

MCR 2.403(O)(1) provides that "[i]f a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation." The word "must" in the court rule indicates that case evaluation sanctions are mandatory. *Tevis*, 283 Mich App at 86. However, a "court may, in the interest of justice, refuse to award actual costs." MCR 2.403(O)(11).

> [T]he "interest of justice" exception should be invoked only in "unusual circumstances," such as where a legal issue of first impression or public interest is present, "'where the law is unsettled and substantial damages are at issue,'" where there is a significant financial disparity between the parties, or "'where the effect on third persons may be significant.'" These factors are not exclusive. "'Other circumstances, including misconduct on the part of the prevailing party, may also trigger this exception.'" [*Harbour*, 266 Mich App at 466, (quoting *Haliw v Sterling Heights*, 257 Mich App 689, 707; 669 NW2d 563 (2003), rev'd in part on other grounds 471 Mich 700 (2005) (internal citations omitted).]

Kelley asserts that four circumstances in the present case should invoke the "interest of justice" exception: (1) AIMS was formed under "suspicious" circumstances and the resolution of the alter-ego claim required credibility determinations; (2) AIMS, because it was in the process of being dissolved, would not benefit from case evaluation sanctions; (3) Kelley did not learn until trial that AIMS was being dissolved; and (4) a judgment in favor of K&R on the alter-ego claim would have benefited K&R's creditors. We conclude that the trial court did not abuse its discretion in concluding that these four circumstances were not "unusual circumstances" necessary to invoke the "interest of justice" exception.

First, the fact that AIMS was formed under "suspicious" circumstances and that credibility determinations were required is not an "unusual circumstance." Cases proceed to trial for credibility determinations. It is not unusual that a trier of fact is required to decide the facts of a case.

Second, AIMS, although it is in the process of being dissolved, can benefit from case evaluation sanctions. Kiser testified that she has "an attorney bill on behalf of AIMS." The attorney bill for AIMS does not evaporate simply because AIMS is being dissolved. A dissolved corporation exists until it has finished winding up its affairs. *Flint Cold Storage*, 285 Mich App at 495-496.

Third, while a party's "gamesmanship," tactical decisions that cause unnecessary costs to the opposing party, may be an unusual circumstance that invokes the "interest of justice" exception, *Harbour*, 266 Mich App at 468, Kelley does not contend that the failure of AIMS's attorney to inform her that AIMS was in the process of being dissolved was misconduct. And, there is no evidence in the record that AIMS sought to keep that information, or any of its financial information, from Kelley. In addition, Kelley was informed before case evaluation that Kiser was thinking of dissolving AIMS. At her May 2007 deposition, Kiser testified that AIMS suffered financial losses for the year 2006 and for the first quarter of year 2007 and that she was not sure that she would continue AIMS. Under these circumstances, Kelley's failure to know that AIMS was no longer conducting business at the time of trial was not an "unusual circumstance" requiring the "interest of justice" exception to be invoked.

Finally, the fact that K&R's creditors would have benefited if Kelley had succeeded on the alter-ego claim is not an "unusual circumstance." The alter-ego claim did not present an issue of public interest and the effect on third persons would not have been significant. Only K&R's creditors could have benefited.

Affirmed in part, reversed in part, and remanded for proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro